

Members

Rep. Trent VanHaaften, Chairperson
Rep. Scott Pelath
Rep. Phil GiaQuinta
Rep. Matt Bell
Rep. Jack Lutz
Rep. Jackie Walorski
Sen. Ron Alting, Vice-Chairperson
Sen. James Merritt
Sen. John Waterman
Sen. Robert Deig
Sen. James Arnold
Sen. Greg Taylor



INTERIM STUDY COMMITTEE ON ALCOHOLIC BEVERAGES ISSUES

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Authority: IC 2-5.5-4

MEETING MINUTES¹

Meeting Date: September 15, 2009
Meeting Time: 1:00 P.M.
Meeting Place: State House, 200 W. Washington St., Room 404
Meeting City: Indianapolis, Indiana
Meeting Number: 2

Members Present: Rep. Trent VanHaaften, Chairperson; Rep. Scott Pelath; Rep. Phil GiaQuinta; Rep. Matt Bell; Rep. Jack Lutz; Rep. Jackie Walorski; Sen. Ron Alting, Vice-Chairperson; Sen. James Merritt; Sen. John Waterman; Sen. Robert Deig; Sen. Greg Taylor.

Members Absent: Sen. James Arnold.

1. Call to order

Rep. Van Haaften called the meeting to order at 1:10 p.m. Rep. Van Haaften discussed the operation of the Committee and said that any information not distributed at the meeting could be e-mailed to the legislators or their staff.

¹ Exhibits and other materials referenced in these minutes can be inspected and copied in the Legislative Information Center in Room 230 of the State House in Indianapolis, Indiana. Requests for copies may be mailed to the Legislative Information Center, Legislative Services Agency, 200 West Washington Street, Indianapolis, IN 46204-2789. A fee of \$0.15 per page and mailing costs will be charged for copies. These minutes are also available on the Internet at the General Assembly homepage. The URL address of the General Assembly homepage is <http://www.in.gov/legislative/>. No fee is charged for viewing, downloading, or printing minutes from the Internet.

Thomas Snow, Chairman, Alcohol and Tobacco Commission (ATC)

Chairman Snow said that he wanted to pay his respects to the Committee since he was unable to attend the last Committee meeting due to a family commitment. He said the ATC would fully cooperate with the Committee in its work.

2. Election day sales

Alex Huskey, Superintendent, Indiana State Excise Police

Mr. Huskey discussed how the ATC enforces the law prohibiting the sale of alcoholic beverages on election days. Mr. Huskey made the following points:

- The Secretary of State's office sends the ATC notice of an election, which the ATC posts on its webpage.
- In an area where there is no election (such as a municipality that doesn't have any contested races), businesses are allowed to sell alcoholic beverages.
- Businesses are allowed to sell alcoholic beverages on the days before an election that satellite voting offices are open.
- In the case of special elections held in school districts on a referendum, it's possible that a retailer within the school district would have to close, while a retailer located outside the district but on the other side of the street could remain open.

3. Sunday sales of carryout alcoholic beverages

Rep. Van Haaften said that the Committee would first receive information from organized groups who are in favor of allowing Sunday carryout sales.

Senator Phil Boots

Senator Boots said that he would introduce legislation in the 2010 session to allow sales of alcoholic beverages for carryout on Sunday. Sen. Boots made the following points:

- Indiana is one of 14 states prohibiting Sunday sales of carryout and is one of three states prohibiting Sunday carryout sales while allowing sales by the drink.
- Sunday is the second biggest shopping day of the week and would provide customer convenience.
- Indiana is the only state that allows drug and grocery stores to sell warm beer but not cold beer. Package liquor stores charge customers a premium for cold beer. Allowing grocery and drug stores to sell cold beer would provide price competition.
- Sunday sales would capture the revenue lost to Sunday shoppers who cross the border to buy alcohol and also groceries, gas, etc.

Sen. Boots said that he owns convenience stores that do not sell alcoholic beverages. Committee discussion ensued regarding whether grocery and drug stores would use alcoholic beverages as a loss leader, necessitating minimum price controls for alcohol similar to those in place for tobacco products. The Committee also discussed

whether the law should be amended to allow package liquor stores to sell more non-alcoholic beverage products.

David J. Hanson, Ph.D., Professor Emeritus of Sociology, State University of New York, Potsdam

Dr. Hanson addressed the Committee on the consequences of repealing the law prohibiting the sale of alcoholic beverages on Sunday. Dr. Hanson submitted his testimony to the Committee in writing (Exhibit 1). Dr. Hanson discussed the inadequacies of a 1995 New Mexico study that found that New Mexico's repeal of its Sunday carryout sales ban resulted in a rise in alcohol related crashes and fatalities. Dr. Hanson discussed a study done by the University of Georgia and Clemson that found that Sunday package sales do not increase alcohol related traffic crashes or fatalities. He said that other research shows that allowing Sunday sales of alcohol may reduce heavy drinking on Saturdays, resulting in a health benefit. Dr. Hanson said that research shows that the later the closing hour for bars and restaurants, the lower the number of traffic fatalities.

Rep. Van Haaften directed LSA staff to obtain statistics from the National Highway Traffic Safety Administration regarding alcohol related traffic accidents on the weekends in Indiana.

Matt Norris, Director, Hoosiers for Beverage Choices

Mr. Norris explained that Hoosiers for Beverage Choices is a statewide grassroots coalition of citizens in support of allowing Sunday carryout sales. Mr. Norris displayed the group's website at <http://www.beveragechoices.com/about.html>. Mr. Norris said that trade groups such as the Indiana Petroleum Council, Indiana Petroleum Marketers and Convenience Store Association, and the Indiana Retail Council financially support the coalition. Mr. Norris said that over 35,000 people have signed their web petition in support of Sunday sales and approximately 30,000 have signed in-store petitions. Mr. Norris says that allowing Sunday sales would provide convenience for consumers and that consumers want to purchase alcoholic beverages at a competitive price.

John Elliott, Public Affairs Manager, Kroger Central Division

Mr. Elliott provided his testimony to the Committee in writing (Exhibit 2). Mr. Elliott made the following points:

- It is fundamentally unfair for the legislature to create and protect package liquor stores' monopoly on cold beer sales. This monopoly forces consumers to pay a premium for cold beer of up to \$4 per case.
- Prohibiting Sunday sales results in a loss of revenue for the state and Indiana businesses, because shoppers cross state lines to shop on Sunday.
- Package stores have not closed in states that allow grocery stores to sell cold beer.
- The argument put forth by package liquor store owners that their clerks are better trained to prevent selling to minors is not supported by the ATC's statistics, which show that package liquor stores have a worse record selling to minors than food retailers.
- Allowing carryout sales on Sunday will not increase drunk driving, because it will likely lead to consumption at home. Currently the law allows people to purchase

alcohol at a restaurant on Sunday or a sporting event and then drive home.

Mr. Elliott said that he would provide the Committee with information as to whether Kroger sells alcohol at below cost. Mr. Elliott said that he opposes a law to require grocery stores to display alcoholic beverages in an area of the store accessible only to persons who are at least 21 years of age, because: (1) the capital improvements required would be cost prohibitive; (2) it would prevent parents accompanied by children from entering the area; and (3) it would inhibit the store's ability to cross-merchandise products.

Douglas Pendleton, owner, Grapevine Cottage

Mr. Pendleton said that he is an independent store owner of a gourmet food and fine wine store in Zionsville and that people come from all over the state to shop in his store. He said that Sunday is the second biggest shopping day of the week and that his business will greatly benefit from allowing Sunday carryout sales.

Grant Monahan, Indiana Retail Council

Mr. Monahan made the following points:

- Eliminating the Sunday carryout sales ban would provide convenience to consumers.
- Indiana lost an estimated \$9 million in sales tax and excise tax because of the Sunday sales ban. Shoppers go to other states on Sunday to buy alcohol, groceries, and other items.
- The Indiana Retail Council would oppose price controls because retailers know best how to price items, and consumers want the best price.

Rep. Van Haaften said that the Committee would now take the testimony of organized groups who are against Sunday carryout sales.

John Livengood, President, Indiana Association of Beverage Retailers (IABR)

Mr. Livengood provided his testimony to the Committee in writing (Exhibit 3). Mr. Livengood played a video concerning the role of package liquor stores. The video is located at IABR's website at www.indianaalcoholsales.com Mr. Livengood made the following points:

- Sunday sales is another turf battle by big box stores, grocery stores, and convenience stores to put package stores out of business and deregulate the sale of alcohol. It is an attempt to close small Indiana businesses so they can make more money.
- Only a handful of states have the kind of wide-open Sunday sales of alcohol (sales by grocery, big box, etc. in addition to package stores) that these stores seek for Indiana, and none of these states have a strong package store industry.
- Competition between package stores and the other stores provide customers with more choices of location and product.
- Package stores do not have a monopoly on cold beer sales because taverns can sell cold beer for carryout.

- Allowing sales on Sunday won't increase sales, it will just spread out the current sales over seven days. Allowing Sunday sales would not put all package stores out of business, but most would not be able to compete.

Warren R. Scheidt, Indiana Association of Beverage Retailers

Mr. Scheidt distributed to the Committee a chart of the different state policies regarding the Sunday sale of alcohol (Exhibit 4) and a handout regarding traffic fatalities statistics (Exhibit 5). Mr. Scheidt made the following points:

- Only seven states have wide open Sunday sales.
- Kentucky and Indiana, in that order, have the most conservative alcohol policies, and the lowest number of traffic fatalities. Michigan and Wisconsin have the most liberal alcohol policies and the highest number of alcohol related traffic fatalities.

Randy Zion, representing package liquor stores

Mr. Zion said that he operates seven liquor stores in the Indianapolis area. Mr. Zion said that the Indiana legislature created package stores to be the stewards of control. Package stores have made the following covenants to the citizens of Indiana:

- Package stores sell only alcoholic beverages and a few related products.
- A person must be at least 21 years of age to enter a package store. This gives excise police probable cause to card anyone entering or leaving the store.
- Package stores only employ clerks who are at least 21 years old. Soon these clerks will have server training approved by the ATC.
- Package stores are owned and managed by Indiana residents.

Mr. Zion said that grocery and big box stores want Sunday sales so they can increase their profits from store areas that are sitting idle on Sunday. He is not interested in changing the law to expand the non-alcoholic beverage products sold in package stores, because this is contrary to why package stores were created, and package stores cannot compete with grocery and big box stores on these products.

John Sinder, owner, Crown Liquors

Mr. Sinder explained he is an owner of Crown Liquors which has 19 stores in Indiana. Mr. Sinder distributed a handout entitled "Statistical evidence supporting no change in Sunday sales". (Exhibit 6). Mr. Sinder said that big box retailing has caused a lot of Indiana businesses to die.

Ronald Culp, owner, Elmwood Liquors

Mr. Culp said that he owns a single liquor store. Mr. Culp made the following points:

- Customers will be better served by Indiana businesses that have ties and are accountable to the community. Allowing Sunday sales would result in a transfer of market share out of the state and remove control from local businesses.
- It will cost his store \$20,000 in labor costs alone to sell carryout on Sunday.

- Big box stores use alcohol as loss leaders.

Jerry Corliss, Chalet Party Shoppe

Mr. Corliss said that he owns package stores in Elkhart County. He made the following points:

- Allowing Sunday carryout sales would reduce the value of package store permits. His package store permits cost \$300,000 each. Last year the state auctioned off licenses in Westfield and Fishers for \$450,000 each.
- If the legislature expanded the products that package stores can sell, he wouldn't do so, because the stores are not set up to sell other products and package stores can't compete with big box stores on these products.
- Sales gains from selling carryout alcoholic beverages on Sunday will be less than 1% of total sales. The cost would be \$75,000 per store, just in labor and benefits, for those stores to be open on Sunday. Not selling on election days costs about \$40,000 per year.
- People shop in other states because other states sell alcohol cheaper, not because other states sell alcohol on Sunday.
- Sixty percent of his sales are beer sales and 80% of his beer sales are cold beer sales. Allowing grocery and drug stores to sell cold beer would put 4 of his 6 stores out of business.
- His stores have policies to prevent sales to minors and to intoxicated persons.

Pamela S. Erickson, Public Action Management

Ms. Erickson said that she is a former Executive Director of the Oregon Liquor Control Commission. Ms. Erickson submitted her written testimony to the Committee (Exhibit 7). Ms. Erickson did a Powerpoint presentation, a written copy of which is attached (Exhibit 8). Ms. Erickson made the following points:

- Normal business practices can't be used for marketing alcoholic beverages or social harm will result. Marketplace regulations need to be refined from time to time, but should be done so with caution with regard to alcohol.
- The United Kingdom deregulated alcohol beginning in the 1960's. The result has been an increase in alcohol consumption, abuse, and serious alcohol related health problems. The report, *The Dangers of Alcohol Deregulation: the United Kingdom Experience* can be accessed at the Public Action Management website at www.pamaction.com
- The World Health Organization believes that broad regulations affecting the entire population are the most effective,

Chris Ward, Lawrence

Mr. Ward said that he is not connected with the liquor business. He said that he just wants to be able to drink responsibly on Sunday.

Reverend Amy Mildenburg, Boone County Ministerial Association

Rev. Mildenburg submitted written testimony to the Committee (Exhibit 9). Rev. Mildenburg expressed her concern and experiences regarding minors stealing and using alcohol. Rev. Mildenburg spoke to the correlation between repealing blue laws and reduced church attendance and increase in alcohol and drug use by formerly religious people.

Jeff Harlow, Pastor, Crossroads Community Church, Kokomo

Mr. Harlow made the following points:

- Increased sales means more sales from more drinkers or the same drinkers drinking more. Increasing sales means increasing problems, because more drinking will be done by the wrong people.
- More children are drinking and at a younger age. He asked the committee for help in protecting children or keeping the protections that they have.
- Deregulating alcohol or making it more accessible, will be making a statement to misdirect children. The legislature needs to let children know that this is not just another product on the shelf.
- Sunday precedes the work week and puts people in a vulnerable frame of mind that makes them liable to binge. Allowing Sunday sales would remove protection from the most vulnerable people.

Clarke Kahlo, Greater Broad Ripple Community Coalition

Mr. Kahlo submitted to the Committee the Drug Free Marion County position statement stating the risks associated with Sunday carryout sales (Exhibit 10). A summary of Mr. Kahlo's comments are attached (Exhibit 11). Mr. Kahlo said that the Greater Broad Ripple Community Coalition was formed to give citizens and residents a stronger voice in the determination of proposed alcohol applications in the area. Mr. Kahlo said that the proliferation of late night bars in Broad Ripple has resulted in significant social disruption and high social, personal, and public costs.

Michael Lockard, Westside Improvement Association, Evansville

Mr. Lockard submitted several handouts to the Committee regarding the effects of alcohol on traffic crashes, crimes, and other incidents and regarding youth and alcohol (Exhibit 12). Mr. Lockard made the following points:

- The 1995 New Mexico study referenced by Dr. Hanson is a valid study and should be given consideration.
- Non-liquor stores should use colored bags for carryout liquor so police would have probable cause to question customers about their purchases.
- Underage drinking in Indiana costs \$450 million in medical costs and loss of work costs.
- The 35,000 people who have signed a web petition with Hoosiers for Beverage Choices in support of Sunday sales is a small percentage of Indiana's total

population

- Mr. Lockard has set up his own website at hoosierchoices.com.

Rep. Van Haaften said that the Committee had run out of time for more testimony. Rep. Van Haaften acknowledged the following people in attendance who had signed up to give testimony. He urged them to submit any written testimony or documentation to the Committee.

Scott Allen, Advisory Council on Underage and Binge Drinking
 Phil Burton, Drug Free Marion County and Advisory Council on Underage
 and Binge Drinking
 Tammy Loew, Drug Free Tippecanoe County, Indiana Collegiate Action
 Network
 Nancy Beals, Drug Free Marion County (see Exhibit 10)

Lisa Hutcheson, Indiana Coalition to Reduce Underage Drinking, submitted written testimony to the Committee (Exhibit 13).

Karen Michler, Drug Free Tippecanoe County

Ms. Michler submitted her testimony in writing to the Committee concerning the compliance checks she coordinates, in which a minor accompanied by a plain clothes police officer attempts to purchase carryout alcohol (Exhibit 14). She said of the 121 checks done in Tippecanoe County since January 1, 2009, 5 stores were non-compliant, consisting of convenience stores, a grocery store, and a "big box store".

Rep. Van Haaften adjourned the meeting at 5:40 p.m.